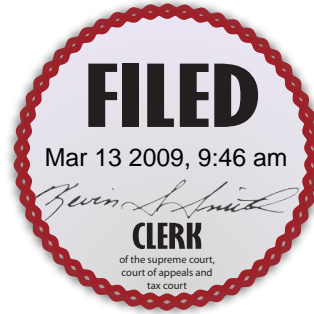


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE TERMINATION OF THE)
PARENTAL RELATIONSHIP OF A.H. and J.H.,)

JENNIFER GRUBBS HOWARD AND)
JEROME HOWARD,)

Appellants-Respondents,)

vs.)

THE DEPARTMENT OF CHILD)
SERVICES OF ALLEN COUNTY,)

Appellee-Petitioner.)

No. 02A03-0809-JV-444

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable William L. Briggs, Sr. Judge
Cause Nos. 02D07-0710-JT-197, 02D07-0710-JT-198

March 13, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellants-Respondents Jennifer Grubbs Howard (“Mother”) and Jerome Howard (“Father”) appeal the involuntary termination of their parental rights to their children, A.R.H. and J.H. On appeal, both parents claim there is insufficient evidence supporting the trial court’s judgments. Mother makes an additional allegation that the trial court committed reversible error when it failed to rule on her motion to reopen the case approximately one month following the conclusion of the termination hearing. Concluding that there is clear and convincing evidence supporting the trial court’s judgment, and that the trial court did not commit reversible error in failing to grant Mother’s motion to reopen, we affirm.

FACTS AND PROCEDURAL HISTORY

Mother and Father are the biological parents of A.R.H., born on March 14, 2000, and J.H., born on January 5, 2002 (collectively, “the children”). In April 2004, the Allen County Department of Child Services (“ACDCS”) became involved with the family when it received a report that Mother was “moving her children around [between] various friends and family members[,]” and that she was living in a hotel. Tr. p. 148. Following

an initial investigation, the children were removed from Mother's care for three days and then returned to her on April 19, 2004, with intensive home-based services being provided by Stop Child Abuse and Neglect, Inc. ("SCAN") as part of its Intensive Intervention Program. Mother did not comply with this program, however, and the children were removed from her care again in July 2004. At the time of the children's second removal, Father was incarcerated on a domestic battery conviction.

On August 13, 2004, ACDCS filed a petition alleging A.R.H. and J.H. were children in need of services ("CHINS"). The CHINS petition was later amended in November 2004. The amended petition alleged that in April 2004, Mother had endangered the children when she left them with her own mother, Karen Clark, who was considered an inappropriate caregiver.¹ The petition further alleged that, at the time of the children's removal, Mother, who was on probation for charges relating to prostitution, was living in a hotel, did not have safe and stable housing for herself and the children, and was also not adequately employed to support herself and her children. The petition also indicated that, as of July 9, 2004, there was an active warrant for Mother's arrest on various charges, including driving while suspended, failure to appear, failure to stop at a thruway, violation of probation, theft, and false informing, and that Mother's whereabouts had been unknown to the ACDCS since August 2004. With regard to Father, the CHINS petition alleged Father was unavailable to provide care for the children due to his ongoing incarceration.

¹ The ACDCS considered Clark to be an inappropriate caregiver due to the fact that there had been substantiated allegations against Clark for neglect of her own children in the 1990s.

An initial hearing on the amended CHINS petition was held on November 16, 2004. Mother failed to appear but was represented by counsel. Father appeared in person and by counsel. Mother, by counsel, denied the allegations of the CHINS petition. Father admitted that he was unable to care for the children due to his continuing incarceration. Following the presentation of this and other evidence, the trial court found the allegations of the CHINS petition to be true, and the children were adjudicated CHINS. The trial court then proceeded to disposition and ordered a parent participation plan for both Mother and Father. The parent participation plan directed both parents to participate in a variety of services and activities in order to achieve reunification with A.R.H. and J.H. including, among other things: (1) to refrain from all criminal activity; (2) to maintain clean, safe, and appropriate housing; (3) to participate in a drug and alcohol assessment and follow all resulting recommendations; (4) to successfully complete anger management/non-violence counseling and parenting classes; and (5) to cooperate with service providers and maintain regular contact with the ACDACS. In addition, Father was ordered to participate in and successfully complete any services available during his incarceration that were comparable to the services required in the parent participation plan. Father was also ordered to obey the terms of his parole.

For the next several years, Mother's participation in services was consistently inconsistent. With regard to visitation, SCAN caseworkers were initially unable to make contact with Mother, and, as a result, her referral for visitation privileges was suspended in April 2004 and not re-opened until March 2, 2005. Mother's visitation privileges were again placed on hold on April 5, 2005, because Mother had failed to exercise them.

Although Mother's referral for visitation was re-opened in September 2005, it was again closed for nonparticipation.

In May and June, 2006, Mother began to regularly visit with the children, and as a result, her supervised office visits were moved to in-home visits in July 2006. Nineteen visits took place in Mother's home but were again placed on hold due to Mother's noncompliance in May or June 2007. In October 2007, Mother's visitation privileges reverted back to supervised office visits and were placed on hold a final time in February 2008.

Mother had a similar pattern of sporadic participation with other court-ordered services as well. For example, Mother completed a drug and alcohol assessment on April 5, 2006, but failed to consistently participate in the resulting recommended treatment plan, which included a substance abuse educational series offered by Park Center and a relapse prevention program. Mother eventually completed the Park Center substance abuse classes; however, it took her approximately seven months to complete the two-month program. In addition, Mother began, but failed to successfully complete, a relapse prevention program and later tested positive for marijuana and cocaine in March 2007, April 2007, and December 2007.

Although Mother eventually completed a parenting class through Caring About People, Inc., she did not consistently attend the weekly scheduled classes, oftentimes missing class for several consecutive weeks. The parenting class supervisor, Stephanie Furnas, testified that she had observed a change in Mother's demeanor by the time Mother had completed the program and testified that, by the end, Mother "wanted to get

the program over very quickly . . . the interest level that she had initially had declined . . . and she was ready to be done.” Tr. p. 93. Mother also failed to refrain from criminal activity, and in September 2007, she was arrested for possession of cocaine and false informing. As part of a plea agreement approved by the Allen County drug court, Mother was required to live at Genesis House, a half-way house, for at least one year. Mother failed to abide by the terms of her plea agreement, however, and left Genesis House in December 2007 without returning.

Meanwhile, throughout the duration of the CHINS case, the trial court adopted several permanency plans calling for either reunification of the family or termination of parental rights, depending on the level of compliance with court orders and cooperation with service providers exhibited by the parents. On October 19, 2006, following a permanency hearing, the trial court approved concurrent plans providing for both reunification and termination of Mother’s and Father’s parental rights. Several months later, following a hearing held on August 17, 2007, the trial court determined both parents to be in substantial non-compliance with the parent participation plan and approved the ACDCS’s recommendation to adopt a permanency plan solely for the termination of parental rights.

On October 3, 2007, the ACDCS filed its petitions for the involuntary termination of Mother’s and Father’s respective parental rights to A.R.H. and J.H. A two-day fact-finding hearing on the termination petitions commenced on February 19, 2008, and was concluded on February 21, 2008. Mother, whose whereabouts had remained unknown since her unauthorized departure from Genesis House in December 2007, did not appear

for the termination hearing but was represented by counsel. Father appeared in person and by counsel. During the hearing, Father testified that he did not have independent housing and was living with his sister. He also admitted that, despite having been out of prison for approximately one and one-half years, he had failed to visit with his children since being release from prison. Finally, although Father claimed he had completed substance abuse classes as part of the terms of his parole, he failed to provide proof of such completion as required and admitted that he had failed to successfully complete any other court-ordered service delineated in the parent participation plan, including anger management/nonviolence counseling, parenting classes, and home-based services through Project Impact.

At the conclusion of the fact-finding hearing, the trial court took the matter under advisement. On March 14, 2008, Mother, by counsel, filed a motion to reopen the evidence in order to establish her circumstances as of the time of the hearing which included the fact that, unbeknownst to her attorney, Mother was “in the process of re-engaging with the drug court to seek another placement that would allow her to have her children with her[.]” Appellant-Mother’s App. p. 48. The motion also sought to introduce evidence of Mother’s current circumstances. The trial court did not rule on Mother’s motion and did not re-open the case.

On May 16, 2008, the trial court issued two judgments, one pertaining to each child under separate cause numbers, terminating both Mother’s and Father’s parental

rights to the children. On June 16, 2008, Mother filed a Motion to Correct Error. The trial court did not rule on the motion to correct error. This appeal ensued.²

DISCUSSION AND DECISION

Mother and Father both challenge the sufficiency of the evidence supporting the trial court's judgments terminating their respective parental rights to the children. In so doing, both parents claim the ACDCS failed to establish, by clear and convincing evidence, that there is a reasonable probability the conditions resulting in the children's removal from their respective care and custody will not be remedied. Father further asserts that there is insufficient evidence proving (1) that continuation of his parent-child relationships with his children poses a threat to their well-being and (2) that termination of Father's parental rights is in the children's best interests. Finally, Mother claims the trial court committed reversible error in failing to rule on her motion to re-open the evidence several weeks after the conclusion of the termination hearing. We will address each argument in turn.

I. Standard of Review

Initially, we observe that this court has long had a highly deferential standard of review in cases concerning the termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). When reviewing the trial court's judgment, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d

² On October 7, 2008, this court issued an order, at Mother's request, consolidating Mother's and Father's appeals regarding the termination of their respective rights to A.R.H. and J.H.

258, 264 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.*

Here, the trial court made specific findings in ordering the termination of both Mother's and Father's parental rights. Where the trial court enters specific findings of fact, we apply a two-tiered standard of review. First, we must determine whether the evidence supports the findings, and second, we determine whether the findings support the judgment. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). In deference to the trial court's unique position to assess the evidence, we will set aside a court's judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*; *see also Bester*, 839 N.E.2d at 147. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. *D.D.*, 804 N.E.2d at 264. A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, the trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *K.S.*, 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

In order to terminate a parent-child relationship, the State is required to allege, among other things, that:

- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child[.]

Ind. Code § 31-35-2-4(b)(2) (2007). The State must establish each of these allegations by clear and convincing evidence. *Egley v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992). If the trial court determines that the allegations in a termination petition are true, the trial court shall terminate the parent-child relationship. Ind. Code § 31-35-2-8(a) (1998 & 2007 Elec. Update)

II. Analysis

A. Reasonable Probability Conditions Will Not Be Remedied

At the outset, we observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. A trial court must therefore find only one of the two requirements of subsection (B) have been established by clear and convincing evidence in order to satisfy this portion of the statute. *See In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999). Here, the trial court determined that the ACDCS presented sufficient evidence to satisfy both requirements of subsection (B). Specifically, the trial court found that the ACDCS established there is a reasonable probability the conditions resulting in the children's removal from both Mother's and Father's care will not be remedied and that the continuation of both Mother's and Father's parental relationships poses a threat to

A.R.H.'s and J.H.'s well-being. We begin our review by considering whether sufficient evidence supports the trial court's findings pertaining to subsection (B)(i).³

When determining whether there is a reasonable probability that the conditions justifying a child's removal or continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. The trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. *A.F. v. Marion County Office of Family & Children*, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), *trans. denied*. The trial court may also properly consider the services offered to the parent by a county Department of Child Services, and the parent's response to those services, as evidence of whether conditions will be remedied. *Id.* Finally, we point out that a county Department of Child Services (here, the ACDCS) is

³ We pause to note that, unlike Father, Mother does not challenge the trial court's findings that continuation of her parental relationships with both A.R.H. and J.H. pose a threat to their well-being in her brief to this court. In failing to do so, and in light of the fact that Indiana Code section 31-35-2-4(b)(s)(B) is written in the disjunctive, Mother has waived review of this issue. *See Davis v. State*, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005) (concluding that failure to present a cogent argument or citation to authority constitutes waiver of issue for appellate review), *trans. denied*; *see also L.S.*, 717 N.E.2d at 209 (explaining that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive and thus requires trial court to find only one of two requirements of subsection (B) by clear and convincing evidence). Waiver notwithstanding, given our preference to resolve a case on its merits, we will nonetheless review Mother's allegations of error regarding subsection (B)(i).

not required to provide evidence ruling out all possibilities of change; rather, it need establish only that there is a reasonable probability the parent's behavior will not change. *In re Kay L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In her Appellant's Brief, Mother acknowledges that she is not a "perfect" mother, that she did not always complete services "in a timely manner[.]" and that the Guardian Ad Litem ("GAL"), although initially very supportive of Mother, finally concluded that Mother would not be able to maintain stable housing and employment. Appellant-Mother's Br. p. 12. Nevertheless, Mother claims that "there was not a 'substantial probability' of future neglect" because she eventually completed all court-ordered services. *Id.* at 13. Father likewise claims there is insufficient evidence supporting the trial court's determination that a reasonable probability exists that he, too, will not remedy the conditions resulting in the children's removal from his care. Specifically, Father argues that he was "incarcerated on two separate occasions during the underlying CHINS proceedings" and thus it was "impossible" to provide support for the children and to participate in services through the ACDCS. Appellant-Father's Br. p. 12. Father also argues that, in light of the facts he was no longer incarcerated and had obtained both a job and a car by the time of the termination hearing, the "circumstances keeping [him] from supporting his children and participating in services had changed. . . ." *Id.* at 13.

In determining that there is a reasonable probability the conditions resulting in the children's removal and continued placement outside of the family home will not be remedied, the trial court found that Mother's whereabouts were unknown at the time of the termination hearing. The court further found that both parents had either failed to

participate in, or failed to benefit from, court-ordered services designed to improve their parenting skills and to facilitate reunification. The court also specifically found that both parents had failed to regularly provide clothing or other necessities, including financial support, for the children throughout the duration of the underlying CHINS case. With regard to Mother, the trial court made the following additional pertinent findings:

6. [Mother] failed to comply with the parent participation plan and failed to benefit from the programs she attended. [Mother] did not complete Project Impact. [Mother] was referred to a parenting education program, her attendance was sporadic; she did complete the program in June 2006. [Mother] attended eight sessions of a relapse prevention program. Her attendance was sporadic; however, she did complete the program in February 2007.
7. [Mother's] visitation was to be supervised and was to take place at SCAN in 2004. SCAN was unable to make contact with [Mother]; the referral was closed in April 2004 and was re-opened again in March 2005 and was closed in April 2005. A new referral for visitation was opened September 2005 and closed because of [Mother's] nonparticipation. Visitation was again set up in May 2, 2006[,] and [Mother] attended eight visits. Visitation was then moved to in-home visits in July 2006 and 19 visits took place in [Mother's] home. Visits were then placed on hold May 2007 as a result of [Mother's] noncompliance.
8. The visits were moved back to SCAN in October 2007. Visits were placed on hold due to [M]other's noncompliance in February 2008. After February 2008, [Mother's] location was unknown to SCAN or the [ACDCS].
9. On September 26, 2007, [Mother] entered Genesis Outreach Program; a drug addiction program. [Mother] relapsed while in the program on December 2, 2007[,] and never returned to the program. The program was designed for attendance for a minimum of one year.
10. [Mother] was offered services beginning in May of 2007 because she was again using drugs and alcohol. [Mother] refused to

participate in the services offered. There is presently a warrant for [Mother's] arrest.

Appellant-Mother's App. p. 2. With regard to Father, the trial court specifically found that he had failed to attend and complete several court-ordered programs, including Park Center's Non-violence Program and the Caring About People parenting program. The trial court further found:

[Father] . . . was incarcerated at the time of the children's removal. [Father] was released from the Department of Corrections, January 15, 2005. [Father] has been employed at Super Value for the past 18 months. [Father] has paid no support nor contributed to the welfare of his children. [Father] has two other children whose ages are five and two and he was ordered to pay support for those children but did not pay support and was more than \$5,000 in arrears. [Father] was convicted and incarcerated for three months for failure to pay child support. It has been one year and possibly two since [Father] has had contact with the children.

Id. at 2.⁴ The evidence most favorable to the trial court's judgments supports all these findings, which in turn support the trial court's ultimate decision to terminate both Mother's and Father's parental rights to the children.

The children were removed from Mother's care in July 2004 due to her inability to provide them with proper food, shelter, and other life necessities. Because Father was incarcerated at the time of the children's removal, he, too, was unavailable to care for the children. The children's continued placement outside of Mother's and Father's care was the result of their respective failures to resolve these issues and to successfully complete court-ordered services. At the time of the termination hearing, the evidence most

⁴ For clarification purposes, we point out that although the trial court entered two separate judgments, under separate cause numbers, in terminating Mother's and Father's parental rights to A.R.H. and to J.H., the substantive language contained in each order is identical, apart from technical information such as the names of the children, etc. We therefore only cite to one of the trial court's judgments.

favorable to the judgments reveals that Mother and Father were still unable to provide the children with even the minimal necessities of life, such as food, shelter, and a safe and nurturing home environment.

The record reveals that Mother's housing instability persisted throughout the duration of the CHINS and termination proceedings and that she bounced between living with relatives and friends and being homeless. Mother also failed to maintain stable and legal employment. Also significant, although we acknowledge that Mother did eventually complete several of the court-ordered services, including parenting classes and substance abuse classes, testimony from various caseworkers indicates that she was nevertheless unable to successfully demonstrate that she had actually benefited from said services. For example, SCAN restoration worker Stacey Dickerson testified that Mother "really struggled to work with implementing some of the [parenting skills], she would become easily stressed . . . in trying to redirect her son . . . [and] she would always ask me to step in and assist" Tr. p. 120. Additionally, ACDCS case manager Trina Riecke testified that Mother had failed several drug screens in 2007 following her completion of the substance abuse program. Finally, at the time of the termination hearing, Mother, whose whereabouts had remained unknown since the time she left the Genesis House several months earlier in violation of court orders, had also failed to exercise her right to visitation with the children since sometime before her disappearance.

Regarding Father, the record reveals that, despite having been out of jail and gainfully employed for approximately eighteen months prior to the termination hearing, Father had yet to successfully accomplish a single dispositional goal set during the

CHINS case. In addition, although the record indicates that Father may have visited with the children a few times under Mother's visitation referral between September 2005 and July 2006, Father admitted that he never attended any subsequently scheduled visits with the children, even after his release from jail, and that he had not had any contact with the children in over a year.

"A pattern of unwillingness to deal with parenting problems and to cooperate with those providing services, in conjunction with unchanged conditions, supports a finding that there exists no reasonable probability that the conditions will change." *Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), *trans. denied*. In addition, the failure to exercise the right to visit one's children demonstrates a "lack of commitment to complete the actions necessary to preserve the parent-child relationship." *Id.* Based on the foregoing, we conclude that the trial court's findings set forth previously are supported by ample evidence. These findings, in turn, support the court's conclusion that there is a reasonable probability the conditions resulting in A.R.H. and J.H.'s removal from both Mother's and Father's care will not be remedied.

As previously explained, a trial court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration the parent's *habitual patterns of conduct* to determine the probability of future neglect or deprivation of the children. *D.D.*, 804 N.E.2d at 266. Additionally, the trial court was responsible for judging Father's credibility and for weighing Mother's and Father's evidence of changed conditions against the evidence demonstrating both parents' habitual

patterns of conduct in failing to visit with the children, failing to provide the children with food and other basic necessities of life, and failing to maintain a safe and stable home environment. It is clear from the language of the judgment that the trial court gave more weight to evidence of the latter, rather than the former, which it was permitted to do. *See Bergman v. Knox County Office of Family & Children*, 750 N.E.2d 809, 812 (Ind. Ct. App. 2001) (concluding that trial court was permitted to and in fact gave more weight to abundant evidence of mother's pattern of conduct in neglecting her children during several years prior to the termination hearing than to mother's testimony that she had changed her life to better accommodate children's needs). Both parents' arguments on appeal amount to an invitation to reweigh the evidence, and this we may not do. *D.D.*, 804 N.E.2d at 264; *see also In re L.V.N.*, 799 N.E.2d 63, 68-71 (Ind. Ct. App. 2003) (concluding that mother's argument that conditions had changed and that she was now drug-free constituted an impermissible invitation to reweigh the evidence).⁵

B. Best Interests

We next turn our attention to Father's allegation that the ACDCS failed to prove that termination of his parental rights is in the children's best interests. We are mindful that, in determining what is in the best interests of a child, the trial court is required to look beyond the factors identified by the Department of Child Services and to consider the totality of the evidence. *McBride v. Monroe County Office of Family & Children*,

⁵ Having concluded there is sufficient evidence supporting the trial court's determination regarding subsection (B)(i) of the termination statute, we need not address Father's arguments regarding the sufficiency of the evidence supporting the trial court's determination regarding subsection (B)(ii), namely, whether continuation of the parent-child relationship between Father and the children poses a threat to their well-being. *See L.S.*, 717 N.E.2d at 209 (explaining that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive).

798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parent to those of the child. *Id.* The court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.* Moreover, we have previously held that the recommendations of the case manager and court-appointed advocate to terminate parental rights, in addition to evidence that the conditions resulting in removal will not be remedied, is sufficient to show by clear and convincing evidence that termination is in the child's best interests. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000).

In its judgments, the trial court found that termination of Father's parental rights was in the children's best interests because Father had "shown over the course of the related CHINS cause, and in the fact of a treatment plan or plans, and numerous specific services made available and/or provided, that said parent[] continues to be unable, refuse[s], or neglect[s] to provide for the basic necessities of a suitable home for raising the . . . child[ren]." Appellant-Father's App. p. 59. This finding is supported by the evidence. The record reveals that Guardian ad Litem ("GAL") Roberta Renbarger testified she believed termination of both Mother's and Father's parental rights was in the children's best interests.⁶ In so doing, Renbarger informed the trial court that given the length of the time the children had been removed from the family home, J.H.'s behavioral needs, and the children's need for permanency, she supported the termination of parental

⁶ Unfortunately, we were unable to review Renbarger's testimony in its entirety due to a recording malfunction that occurred during a portion of the termination hearing. Pursuant to Indiana Appellate Rule 31(A), however, the parties requested, and the trial court certified, a verified statement of evidence concerning Renbarger's testimony and ordered said statement be made a part of the record. We rely on that verified statement of evidence herein.

rights and adoption of the children. Similarly, case manager Riecke also recommended termination of Father's parental rights. In so doing, Riecke testified that Father "had not followed through" with court-ordered services, including parenting classes and a drug and alcohol assessment. Tr. p. 156. Riecke further testified that Father had failed to maintain contact with her throughout the duration of the CHINS case, had failed to provide her with any documentation of employment, and had failed to provide financial support for the children. When questioned as to Father's current relationship with the children, Riecke replied, "[H]e doesn't have a relationship with his children." *Id.* at 157.

Based on the totality of the evidence, including Father's failure to complete or benefit from any of the services available to him throughout the duration of the CHINS proceedings and his failure to visit with the children for over a year, coupled with the testimony from both Renbarger and Riecke recommending the termination of Father's parental rights, we conclude that there is sufficient evidence to support the trial court's conclusion that termination of Father's parental rights is in the children's best interests. *See, e.g., In re A.I.*, 825 N.E.2d 798, 811 (Ind. Ct. App. 2005) (concluding that testimony of the CASA and family case manager, coupled with evidence that conditions resulting in continued placement outside the home will not be remedied, is sufficient to prove by clear and convincing evidence termination is in child's best interests), *trans. denied*.

III. Motion to Reopen Evidence

Finally, we turn to Mother's assertion that the trial court committed reversible error in failing to rule on her motion to reopen the case to allow her the opportunity to introduce new evidence concerning her status as of the time of the termination hearing.

“Evidence must be offered during the course of a trial[,] and it is a matter of discretion whether a trial court will permit a party to present additional evidence or testimony once the party has rested, once both parties have rested, or after the close of all of the evidence[.]” *In re D.Q.*, 745 N.E.2d 904, 908 (Ind. Ct. App. 2001). A trial court’s decision in this regard will be disturbed only if there is a clear abuse of discretion. *Id.*

Generally speaking, there are two conditions which must be shown to exist to justify a court of appellate jurisdiction in setting aside a ruling made by a trial court in the exercise of judicial discretion, namely, (1) that the action complained of must have been unreasonable in light of all attendant circumstances and (2) that such action was prejudicial to the rights of the complaining party (here, Mother). *Flynn v. State*, 497 N.E.2d 912, 914 (Ind. 1986). On the record before us, it does not appear that the trial court acted unreasonably in failing to grant Mother’s motion to reopen the case in order to present additional evidence concerning her circumstances as they existed at the time of the termination hearing when it plainly appears that such evidence could have been offered earlier. Mother was properly served with notice of the termination hearing but failed to appear on either day of the two-day hearing. Thus, Mother, who had notice of the termination hearing and was represented by counsel despite her own absence, had already been provided with an opportunity to introduce evidence concerning her circumstances as of the time of the termination hearing. Moreover, in light of the significant amount of evidence demonstrating Mother’s habitual pattern of conduct in failing to complete and benefit from services and in repeatedly violating court orders, including her most recent unauthorized departure from Genesis House in violation of a

negotiated plea agreement, Mother has failed to demonstrate how the trial court's refusal to grant her motion to reopen the evidence resulted in any prejudice. Accordingly, we find no clear abuse of discretion.

IV. Conclusion

A thorough review of the record leaves this court convinced that the trial court's judgment terminating both Mother's and Father's parental rights to A.R.H. and J.H. is supported by clear and convincing evidence. Since the time of the children's removal from the parents' care in 2004, both Mother and Father have failed to make any significant improvement in their respective abilities to care for their children. It is unfair to ask the children to continue to wait until Mother and/or Father are willing to obtain, and benefit from, the help that they need. *See In re Campbell*, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (stating that the court was unwilling to put the children "on a shelf" until their mother was capable of caring for them). In addition, we find no clear abuse of discretion in the trial court's refusal to grant Mother's motion to reopen the evidence. We will reverse a termination of parental rights "only upon a showing of "clear error" – that which leaves us with a definite and firm conviction that a mistake has been made." *Matter of A.N.J.*, 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (*quoting Egly*, 592 N.E.2d at 1235). We find no such error here.

The judgment of the trial court is hereby affirmed.

FRIEDLANDER, J., and MAY, J., concur.